

§217.76

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Alaska Region Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

- (1) Date(s) and time(s) of the launch;
- (2) Location of camera system and acoustic recorders (if used);
- (3) Design of the monitoring program and a description of how data is stored and analyzed; and

(4) Results of the monitoring program, including, but not necessarily limited to:

- (i) Numbers of pinnipeds, by species and age class (if possible), present on the haulout prior to commencement of the launch;
- (ii) Numbers of pinnipeds, by species and age class (if possible), that may have been harassed, including the number that entered the water as a result of launch noise;
- (iii) The length of time pinnipeds remained off the haulout during post-launch monitoring;
- (iv) Number of harbor seal pups that may have been injured or killed as a result of the launch; and
- (v) Other behavioral modifications by pinnipeds that were likely the result of launch noise.

(5) Results of sound pressure and sound exposure level monitoring will be reported in flat weighted, A-weighted, and peak measurements.

(e) An annual report must be submitted at the time of request for a renewal of the Letter of Authorization; it will include results of the aerial quarterly trend counts of pinnipeds at Ugak Island.

(f) A final report must be submitted at least 90 days prior to expiration of these regulations if new regulations are sought or 180 days after expiration of regulations. This report will:

- (1) Summarize the activities undertaken and the results reported in all previous reports;
- (2) Assess the impacts of launch activities on pinnipeds within the action area, including potential for pup injury and mortality; and

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(3) Assess the cumulative impacts on pinnipeds and other marine mammals from multiple rocket launches.

§217.76 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization with a period of validity less than the effective period of the regulations in this subpart may be renewed subject to renewal conditions in §217.76.

(c) A Letter of Authorization will set forth:

- (1) The number of marine mammals, by species and age class, authorized to be taken;
- (2) Permissible methods of incidental taking;
- (3) Specified geographical region;
- (4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and
- (5) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§217.77 Renewal of a Letter of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §217.76 for the activity identified in §217.70(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application for a Letter of Authorization submitted under §217.76 will be undertaken and that there will not be a substantial modification to the described activity, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of and acceptance by NMFS of the monitoring reports required under §217.75;

(3) A determination by NMFS that the mitigation, monitoring, and reporting measures required under §§217.74 and 217.75 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.128 of this chapter indicates that a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days to review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration; and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

(d) NMFS, in response to new information and in consultation with the AAC, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation or monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the AAC's monitoring from the previous year.

(2) Results from general marine mammal and sound research.

§217.78 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under §217.77 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.70(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts I–Q [Reserved]

Subpart R—Taking of Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility Off Massachusetts

SOURCE: 76 FR 34172, June 13, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 34172, June 13, 2011, subpart R was added, effective July 11, 2011 through July 10, 2016.

§217.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Neptune LNG LLC (Neptune) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to commissioning and operation, including maintenance and repair activities, at the Neptune Deepwater Port (Port).

(b) The taking of marine mammals by Neptune may be authorized in a Letter of Authorization only if it occurs at the Neptune Deepwater Port